

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

CrI.MC.No. 3096 of 2007()

(C.C. NO. 557/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
VARKALA)

PETITIONER: ACCUSED

1. V.RAVINDRADAS, AGED 60,
S/O. VELAYUDHAN, BHARATHI BHAVAN, VARKALA POST,
TRIVANDRUM DISTRICT.
2. R.SHIYARI, AGED 30, D/O. SASIKALA,
TRIVANDRUM DISTRICT.
3. SASIKALA, D/O. BHARATHI,
BHARATHI BHAVAN, VARKALA POST,
TRIVANDRUM DISTRICT.
4. R.SHEIERRY, D/O. SASIKALA,
BHARATHI BHAVAN, VARKALA POST,
TRIVANDRUM DISTRICT.
5. BAIJU, AGED 36, S/O. RAJENDRAN,
BHARATHI BHAVAN, VARKALA POST,
TRIVANDRUM DISTRICT.

BY ADV. SRI.VAKKOM N.VIJAYAN
SRI. R. SURESH
SRI. ANIYAN P.

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
VARKALA POLICE STATION, TRIVANDRUM DISTRICT.
3. CHITHRA ASOKAN,
BHARATHI BHAVAN, NEAR MUNICIPAL TOWN HALL,
STATION ROAD, VARKALA POST, TRIVANDRUM DISTRICT.

BY ADV. SRI. JIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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Crl.M.C. No.3096 Of 2007
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Dated this the 11th day of October, 2007

ORDER

Petitioners are arrayed as accused in a private complaint filed by the 3rd respondent. An incident had taken place at 6.15 p.m. on 16.11.03 in a common house, different rooms of which are occupied by the rival contestants. In that incident, the 3rd respondent herein had also allegedly suffered injuries. The 5th petitioner also allegedly had suffered injuries. On a complaint filed by the petitioners, a crime was registered. Investigation was completed and final report has been filed, that is Crime No. 516/03 and C.C.No.423/04. There are 3 accused persons including the 3rd respondent herein.

2. The 3rd respondent raised a grievance that he was not the aggressor but victim of the aggression. According to him, the Police was not taking any action. He therefore filed a private complaint, which was referred by the learned Magistrate to the Police. The same was registered as Crime No. 214/2004. Investigation continued. A refer report (a copy of which is produced as Annexure A iv) was filed after such investigation. Dissatisfied with the final report submitted by the Police, the 3rd respondent filed a protest complaint. The learned Magistrate has taken cognizance of offences allegedly committed by

the petitioners. That case is now pending as C.C.No.567/2006.

3. Petitioners have now come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash C.C.No.557/2006 registered against them.

4. What is the reason? The learned counsel for the petitioner submits that the allegations raised against the petitioners in C.C.No.567/2006 are false. The Police have already investigated the crime. They have already referred the complaint as false. In these circumstances, the learned Magistrate was not justified in taking cognizance of the offences allegedly committed by the petitioners. This in short is the plea. I have been taken through Annexure A-iv-final report. A reading of that report shows that admittedly an incident had taken place at about 6.15 p.m. on 16.11.03, at the building occupied by the rival contestants. Allegations and counter allegations have been traded about the incident which had taken place there. The Police have accepted the version of the petitioners. The 3rd respondent's version has not been accepted. The 3rd respondent is aggrieved by the action of the Police, in that they are not accepting the version of the 3rd respondent but only accepting the version of the petitioners.

5. At this stage of the proceedings it will be presumptuous on the part of the Court to come to specific or definite conclusions about

the acceptability of the allegations raised by the rival contestants. Going through Annexure A-iv, it appears to be evident that the 3rd respondent had also suffered some injury, even if it be accepted that such injury is only a minor injury. In view of all the allegations and counter allegations raised by the rival contestants and the acceptance of the version of one of them by the Police, the 3rd respondent cannot found fault with for approaching the learned Magistrate with his grievance. It must be noted that it is evident even from Annexure-A-iv that the 3rd respondent had suffered injury. I am in these circumstances satisfied that relative merits of the case of contestants in the case and counter case cannot be assessed at this stage by invoking powers under Section 482 Cr.P.C. The parties will have to appear before the learned Magistrate and effectively and substantively raise their contentions there. At any rate, the prayer for invoking powers under Section 482 Cr.P.C to quash the counter case does not appear to be acceptable, in these circumstances. In the result, this petition is dismissed.

(R.BASANT, JUDGE)

sj

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P.A.TO JUDGE